



POLICE DEPARTMENT

March 9, 2010

MEMORANDAM FOR: Police Commissioner

Re: Police Officer Candy Medina
Tax Registry No. 939007
Housing Borough Manhattan
Disciplinary Case No. 85369/09

The above-member of the Department appeared before the Court on January 14 and January 29, 2010 charged with the following:

1. Said Police Officer Candy Medina, assigned to the 48th Precinct, while off-duty, on or about April 1, 2009, in the vicinity of [REDACTED], within the confines of the [REDACTED] Precinct, in [REDACTED] County, engaged in conduct prejudicial to the good order, efficiency or discipline of the department in that said Officer after involving himself in a verbal dispute did hand over his firearm to [REDACTED], who in turn handed it to [REDACTED], thus failing to properly safeguard his firearm.

P.G. 204-08, Page 2, Paragraph 7 – FIREARMS-GENERAL REGULATIONS

P.G. 203-10, Page 1, Paragraph 5 GENERAL REGULATIONS

The Department was represented by Mark Berger, Esq., Department Advocate's Office, and the Respondent was represented by John Tynan, Esq.

The Respondent, through his counsel, entered a plea of Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent, having pleaded Guilty, is found Guilty.

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SUMMARY OF EVIDENCE IN MITIGATION

The Respondent has four and a half years with the Department and is currently assigned to Housing VIPER 1. He testified that on April 1, 2009, he was in a restaurant called Jobo with his friends, [REDACTED] and [REDACTED]'s girlfriend [REDACTED]. Prior to arriving at the restaurant he had "like a beer or something" and was not intoxicated. He had his service weapon, a semi-automatic Glock 19 in a holster on his right hip. The gun was concealed under his jacket and shirt. He also had his shield and his identification card on him.

The Respondent and his friends went to the restaurant to get food and when he was ordering the food "for some type of reason this guy thought I was being loud so he came at me telling me that he didn't like you know that I was being so loud and he became agitated." At first the Respondent thought the man was alone, but he became aware that he was with three other males. The Respondent could not remember the appearance of the man who was acting "aggressive" towards him, but remembered that he appeared to be intoxicated.

The Respondent thought the male was "playing around at first" but then realized that he was serious. At one point, according to the Respondent, the male and his three friends began walking towards him. While the Respondent could not remember what they were saying to him, he recalled that "they were just mad that I was being loud." The Respondent, believing that "something was going to happen...[b]ecause they were getting loud towards me and the main guy he actually poked me," identified himself as a police officer and showed them his ID which he had around his neck. The males said they did not care that he was a police officer, causing the Respondent to believe that they

were going to do something to him. He stated that his concern was that it was four against one and the possibility of his weapon being taken from him. He “[d]idn’t know exactly what to do for my safety and the safety of others because I didn’t want them to take my gun I thought it was suitable for me to give the gun to my friend so he could go through the side to the stairs and call 911.” He then gave his gun to his friend [REDACTED]. He explained that he removed his gun from under his shirt and jacket and “passed it to my friend that was to my left.” The Respondent did not see what [REDACTED] did with the gun because he was “focused on the guys.”

The Respondent expected the males to do “something” but “then somebody said that the cops were on the way.” The Respondent waited for the police while the males walked towards the door of the restaurant. When asked where his firearm was at during that time, he stated “[w]hen they backed up they gave me my gun back and I put it back.” The males remained in the restaurant and did not approach him again.

The Respondent stated that his gun was out of his possession for approximately “one, two minutes tops.” When the police arrived the Respondent identified himself and they put him aside away from the males.

On cross-examination, it was pointed out and the Respondent agreed, that he previously made a statement that prior to someone stating that the police were on the way somebody, who “was at the restaurant” got in between the Respondent and the male (his name is [REDACTED], no relation to the Respondent). It was at that point that someone yelled that the police were on the way. The Respondent added that “Somebody got in the middle but they didn’t back up at that point somebody did get in the middle but they were still yelling and they were in front of me.”

The Respondent stated that after giving [REDACTED] his firearm [REDACTED] never left the restaurant as the Respondent expected, even though he testified that he told him to call 911. The Respondent added that [REDACTED] was behind him and he "really [did not] know what happened at that point because I was focusing on the guys." The Respondent noted that he pled guilty to the charges in this case, in giving his gun to [REDACTED] and it was only at a later point that he learned that the gun was handed over to [REDACTED] because he "didn't see it." He further explained that he was told by either [REDACTED] or [REDACTED] that when [REDACTED] had the gun in his possession he racked the slide causing a bullet to be ejected from the weapon. (No bullet was fired from the gun.) It was at that point that [REDACTED] took the gun from him. The Respondent stated that [REDACTED] took the gun back from [REDACTED] before giving it back to the Respondent. The Respondent stated that he gave [REDACTED] the gun when the males were the distance of "[l]ike a person" away from him. The Respondent acknowledged that "it's possible" that he told the male ([REDACTED]) that if he wanted to fight then "let's fight."

The Respondent testified that at the time of this incident he knew [REDACTED] for about a year. He acknowledged that he did not know if [REDACTED] had any training in the handling and use of firearms. He also acknowledged that when his gun went from him to [REDACTED] to [REDACTED] and back to [REDACTED] he had no idea what was going on with the gun because his eyes were off of the gun.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y. 2d 222 (1974).

The Respondent was appointed to the Department on July 11, 2005. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent has pled Guilty to failing to properly safeguarding his firearm in that after involving himself in a verbal dispute with an individual in a restaurant, he handed his firearm to [REDACTED] where [REDACTED] then took possession of it.

The Respondent stated that he gave his gun to [REDACTED] for his safety and the safety of others in the restaurant. He was afraid that one of the males would take it from him during a physical altercation. But his act placed him and others in more danger than if he kept possession of the weapon.

First, the gun was concealed in a holster under his shirt and jacket. It was therefore not readily apparent that he was carrying the gun. Once he removed it from his holster he allowed the males to see it and know that it was in [REDACTED]'s possession. If any one of the males had an interest in possessing a gun during that incident, he now knew where to get one.

The Respondent, as a police officer, also allowed himself to be unarmed facing four males who he thought were about to attack him. At that point he had no way of knowing if any one or all of them were armed with a weapon and by giving his gun away he left himself defenseless in the face of any serious threat that might have presented itself in the restaurant.

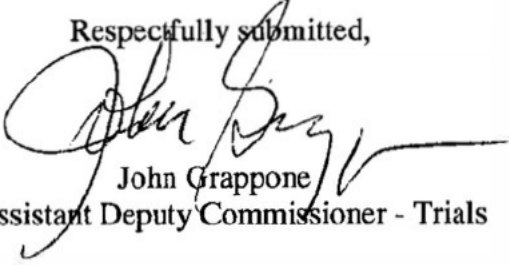
It was also irresponsible of the Respondent to hand [REDACTED] his gun because [REDACTED] did not have any training in the use of firearms, to the Respondent's knowledge. As it turned out, [REDACTED] appeared to have acted recklessly where he pulled the slide back on the gun causing a bullet to be ejected from the weapon. At that point [REDACTED] took the gun from him apparently to prevent anything more serious from occurring, underscoring the lack of wisdom in giving the gun to [REDACTED]. Once again it is likely that the males saw the further transfer of the gun to [REDACTED] and she too could have been overpowered by one or more of them to get the gun from her.

The Respondent did not act responsibly in separating himself from his firearm and placed himself and those around him in more danger of harm.

The Department has recommended a penalty of time served on suspension and one year dismissal probation and this Court concurs with that recommendation.

Based on the foregoing, I recommend that the Respondent be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at anytime without further proceedings. I further recommend that the Respondent forfeit the period of 30 days he served on pre-trial suspension.

APPROVED
JUN 8 2010
RAYMOND W. KELLY
POLICE COMMISSIONER

Respectfully submitted,

John Grappone
Assistant Deputy Commissioner - Trials

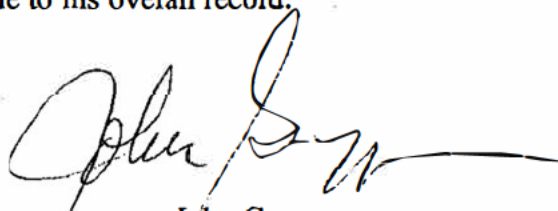
POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER CANDY MADINA
TAX REGISTRY NO. 939007
DISCIPLINARY CASE NO. 85369/09

In his yearly evaluations of 2007 and 2008 the Respondent was rated 3.0 “Competent” and in 2009, he was rated 3.5, “Above Competent.”

The Respondent has no prior formal disciplinary charges. He was placed in Level II Disciplinary Monitoring on May 21, 2009, due to his overall record.

For your consideration.



John Grappone
Assistant Deputy Commissioner – Trials